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January 3, 2005

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5609 (Christopher K. Baker d/b/a Bluepoint Consulting)

Dear Mr. Norton:

This office represents Christopher K. Baker (doing business as Bluepoint Consulting ("Bluepoint")) and collectively referred to herein as "Bluepoint") who has received a complaint ("Complaint") designated Matter Under Review ("MUR") 5609 by the Federal Election Commission ("FEC" or "Commission").

Bluepoint demonstrates through the attached January 3, 2005 Affidavit of Christopher K. Baker that the charge contained in the Complaint is baseless and subject to dismissal under 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6. The Commission should find that there is no reason to believe that Bluepoint violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), and dismiss this matter.

THE COMPLAINT

This Complaint is mostly concerned with Arizona state law and Arizona state elections, which are outside the FEC's jurisdiction. The Complaint contains little about federal elections. The portion of the Complaint related to federal elections is described below.

Simply put, the Complaint alleges coordination between the Club for Growth, Inc. ("Club") and Congressman Trent Franks, although it is impossible to glean from the Complaint what type of coordination is alleged. The complainant bases her allegations of coordination on the fact that her research shows that the Club paid Bluepoint \$74,510 from January to August 2004 and that, again according to her research, Congressman Trent Franks' campaign, in addition to several state legislative campaigns, also paid Bluepoint. As a summation, the complainant states as follows: "We believe there exists a high likelihood that due to

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the fees paid to both the Club for Growth and the candidates that coordination did occur in violation of the federal law”

In short, if every fact alleged in the Complaint were assumed to be true, no reasonable person could have concluded that Bluepoint’s actions caused the Club to coordinate with the Franks campaign. As seen below, the Club and Bluepoint engaged in no coordination with respect to Congressman Franks’ campaign, and the matter should be dismissed.

THE LAW

According to the FEC’s regulations, a “coordinated communication” is a communication by a third party that meets both the content and conduct standards contained in the regulations. 11 C.F.R. § 109.21(a). Three of the four content standards require that a federal candidate be clearly identified in the communication at issue. *Id.* § 109.21(c)(1), (3), (4).¹ The other content standard applies to “a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate’s authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted [under other FEC regulations].” *Id.* § 109.21(c)(2).

In particular, the common vendor conduct standard requires that the common vendor use or convey to the person paying for the communication:

- Information about the clearly identified candidate's campaign plans, projects, activities, or needs, or his or her opponent's campaign plans, projects, activities, or needs, or a political party committee's campaign plans, projects, activities, or needs and that information is material to the creation, production, or distribution of the communication; or
- Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an

¹ For the electioneering communication and 120-day public communication prongs, there is a requirement that any communication be directed toward the jurisdiction in question.

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agent of any of the foregoing, and that information is material to the creation, production, or distribution of the communication.

Id. § 109.21(d)(4)(iii).

In addition, the regulations count as an in-kind contribution any non-political party expenditure that is “coordinated within the meaning of” section 109.20(a) but does not qualify as a “coordinated communication” as described above. Id. § 109.20(b).

DISCUSSION

A. The Complainant Made No Factual Allegations of a Violation.

The Complaint in this matter revolves around the issue of coordination, but what type of coordination allegedly took place is not provided in the Complaint. Saying that Bluepoint is a common vendor in the last election cycle to the Club and a Congressman’s campaign is insufficient to make out a violation of law. Rather, the FEC has issued regulations identifying four categories of content and five categories of conduct that will satisfy the conduct element of a coordinated communication. The allegations in the Complaint only mention one part of one conduct factor (i.e., that Bluepoint was a vendor in common to the Club and to Congressman Franks’ campaign) and do not speak to the content standards at all.

The Complainant makes an inference that because both the Club and the Congressman’s campaign appear to have paid the same consultant, some coordination was involved. The Complaint does not even mention whether a covered communication was made by Bluepoint or the Club or make any other specific allegation. No facts are mentioned because, per the attached affidavit of Christopher K. Baker (discussed below), there are no such facts. Inferences are not facts and do not rise to the level of a valid complaint.

Further, the regulations are quite specific that all of the components of being a common vendor must be met in order for that element of the conduct standard to be triggered. First and foremost, certain types of information about the campaign from a common vendor must have been used for a third party’s covered communication. See id. § 109.21(d)(4). The Complaint does not so allege, and as will be seen below, Bluepoint did not pass on any campaign information to the Club or engage in any activity on behalf Club for Congressman Franks. See Affidavit of

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Christopher K. Baker dated January 3, 2005, before the Federal Election Commission (hereinafter "Baker Aff.") at ¶¶ 3-10 (attached hereto at Tab 1).

B. Respondents Did not Make or Assist in the Making of Coordinated Communications.

According to the Affidavit of Christopher Baker, Bluepoint did not conduct any activity within the purview of the Commission's coordination regulations. First and foremost, Mr. Baker is not aware of any communication by the Club with respect to Congressman Franks. Id. ¶ 10. If there were any such activities on the part of the Club, Bluepoint was not the vendor used by the Club for such activities. Id.

Moreover, Bluepoint did not provide any information to the Club for any coordinated communication, nor did Bluepoint make a coordinated communication itself. Mr. Baker "did not provide the Club with any information about Congressman Franks' (or his opponent's) campaign plans, projects, activities, or needs" and did not use any such campaign information in providing services to the Club. Baker Aff. ¶¶ 5-6. In addition, Mr. Baker "did not provide the Club with any information that [he] had used previously in providing services to Congressman Franks, his campaign, his opponent, or his opponent's campaign" and did not use any such previously-acquired information to provide services to the Club. Id. ¶¶ 7-8. Finally, Mr. Baker did not provide any information to Congressman Franks or his campaign about the activities of the Club. Id. ¶ 9.

Based upon the sworn facts in this case and in contrast to the baseless Complaint, it is clear that Bluepoint did not make any coordinated communications with respect to Congressman Franks and did not assist the Club in making any such coordinated communications. Bluepoint simply did not act as a conduit for campaign information as specified in the Commission's regulations. Absent facts that establish a conduit role, Bluepoint's conduct does not align with the conduct standards established by the FEC in its coordination regulations for common vendors, even if Bluepoint were employed by both the Club and Congressman Franks during this election cycle. See id. § 109.21(d)(4) (common vendor conduct standards). Without the proscribed common vendor conduct, there can be no

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coordinated communication. See id. § 109.21(1) (requiring conduct and content requirements to be fulfilled in order to have a coordinated communication).²

C. There Were No Coordinated Expenditures.

Not only did Bluepoint not make or assist in the making of any coordinated communication, it also did not make any other type of expenditure coordinated with the Congressman's campaign. As Mr. Baker has sworn under oath, he "did not perform any services for the [Club] that were related to Congressman Trent Franks or his re-election campaign for Congress" and he was "not paid by the Club, or anyone else, to perform work for Congressman Trent Franks." Baker Aff. ¶¶ 3-4. Instead, none of Bluepoint's work related to Congressman Franks or resulted in any public communications in Arizona. See id. ¶¶ 3, 11-12. When Bluepoint did work for Congressman Franks, in 2003, it was paid by Congressman's campaign. See id. ¶ 13.

As a result of these facts about Bluepoint's work, it is clear that there is no merit to the unsubstantiated allegation in the Complaint that Bluepoint coordinated the Club's activities with the Congressman's campaign.

² Please note that, without a covered communication on the part of the Club or Bluepoint, there also cannot be a coordinated communication. See 11 C.F.R. § 109.21(c) (content standards). There is no allegation in the Complaint that the Club or Bluepoint made a communication with respect to Congressman Franks where the content is covered by the Commission's coordinated communication regulations. See id.

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CONCLUSION

There are no facts that suggest that Bluepoint coordinated communications or other types or expenditures with Congressman Franks' campaign for the Club or for anyone else. Bluepoint did not act as a conduit for any campaign or vendor information. It also only worked for the Congressman's campaign when paid by the campaign and at no other time. Thus, no in-kind contributions were made and no law violated. Any suggestion by the complainant to the contrary is based upon a lack of facts and faulty suppositions. Thus, the Commission should find that there is no reason to believe a violation occurred and should dismiss this matter.

Sincerely,



Carol A. Laham

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BEFORE THE FEDERAL ELECTION COMMISSION

Washington)
)
District of Columbia)

Matter Under Review 5609

AFFIDAVIT OF CHRISTOPHER K. BAKER

CHRISTOPHER K. BAKER, first being duly sworn, deposes and says:

1. I am Christopher K. Baker. I operate a politic consulting business in Scottsdale, Arizona called Bluepoint Consulting ("Bluepoint").
2. I have read the complaint in Matter Under Review 5609 filed by Barbara Lubin on behalf of the Clean Elections Institute, Inc. I understand that this complaint relates to the 2003-2004 election cycle and thus this affidavit relates to that election cycle. Further, the only Federal candidate identified in the complaint was Congressman Trent Franks. Thus, my response is limited to my activities on behalf of this Federal candidate since it is my understanding that Federal law does not regulate any activity I may have undertaken on behalf of state candidates.
3. I did not perform any services for the Club for Growth, Inc. ("Club") that were related to Congressman Trent Franks or his re-election campaign for Congress.
4. I have not been paid by the Club, or anyone else, to perform work for Congressman Trent Franks.
5. I did not provide the Club with any information about Congressman Franks' (or his opponent's) campaign plans, projects, activities, or needs during the 2003-2004 election cycle or prior thereto.
6. I did not use in providing services to the Club during the 2003-2004 election cycle or prior thereto any information about Congressman Franks' (or his opponent's) campaign plans, projects, activities.
7. I did not provide the Club with any information that I had used previously in providing services to Congressman Franks, his campaign, his opponent, or his opponent's campaign.
8. I did not use in providing services to the Club during the 2003-2004 election cycle or prior thereto any information that I had used previously in providing services to Congressman Franks, his campaign, his opponent, or his opponent's campaign.
9. I did not provide any information to Congressman Trent Franks or his campaign about the works of the Club.
10. I am not aware of any activity by the Club related to Congressman Trent Franks. Further, if the Club did engage in any such activity, I was not the vendor used by the Club for the activity.

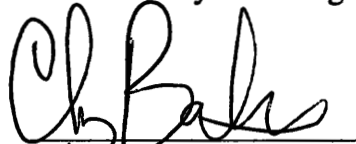
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11. The Club has paid me, doing business as Bluepoint, a monthly retainer since July 2001 for political consulting, which includes research into candidate positions, research into issues of interest to the Club, analysis of Congressional races, and the drafting of direct mail pieces.

12. I have never drafted any communications for the Club that were disseminated in Arizona or that referred to Congressman Franks.

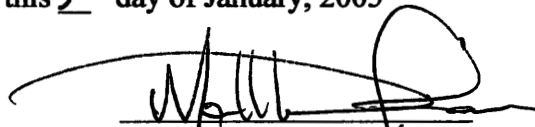
13. In 2003, I, doing business as Bluepoint, received payments from Congressman Trent Franks' campaign for general consulting work. I was not paid by the Congressman's campaign in 2004 and did not work for his campaign in 2004.

The above information is true and correct to the best of my knowledge.


Christopher K. Baker

Washington, D.C.

Subscribed to and sworn before me this 3th day of January, 2005


Notary Public

My Commission Expires: 5/17/08

